



OPERATIONAL BULLETIN: PRG-2011-20

TITLE: Personal Search of Transsexual or Intersexed Persons

Date of Issue:	Mode(s):	Target Audience:	Area of Interest:
2011-08-22	All	National	Traveller

Details:

The *Customs Act* subsection 98(4), the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* subsection 15(4) and the *Immigration and Refugee Protection Act* subsection 139(2) legislate that a search of a person must be performed by a person of the same sex as the person being searched; however, other considerations may arise, specifically in the context of transsexual and intersexed individuals.

The purpose of this Operational Bulletin is to inform Border Services Officers (BSOs) of the procedure for conducting personal searches of transsexual or intersexed individuals. This procedure has been developed in accordance with current Canadian human rights jurisprudence, and further to review of Canadian federal, provincial and municipal personal search policies.

Definitions:

The sex of a person can be characterized by biological features as well as psychological attributes.

A **transsexual** is a person who strongly identifies with the opposite sex and may seek to live as a member of this sex especially by undergoing surgery and hormone therapy to obtain the necessary physical appearance (as by changing the external sex organs).

An **intersexed** individual is a person who has a mixture of male and female reproductive structures, so that it is not clear at birth whether the person is a male or a female.

Actions required by BSOs and supervising officers:

Choice of Sex of Searching Officer:

Should a situation arise where a personal search is required on a transsexual or intersexed person, the CBSA must provide the individual under arrest or detention with a choice of the sex of the BSOs who will conduct the personal search. The options that will be available to the individual are:

- A. male BSOs only,
- B. female BSOs only, or
- C. a split search.

Note: A split search is conducted by two sets of BSOs, the first set completes the search of the upper body while leaving the lower body clothed. The individual is then permitted to fully dress, and is turned over to a second set of BSOs of the opposite sex to conduct the search of the lower body, while the upper body remains clothed. The individual being searched will be fully observed at all times during the turnover from the first set of BSOs to the second set of BSOs to ensure that continuity of any potential evidence is maintained throughout the search process.

Note: Any BSO or person of authority who was not present when the original caution was read, must immediately read the secondary caution statement as soon as he or she interacts with the detained individual.

Once the individual has chosen which sex of BSOs will conduct the personal search, the choice will be recorded in the notebooks of all officers involved.

Where a BSO has serious reason to doubt an individual's self-identification as a transsexual or intersexed person, absent any objective criteria that would cause the BSO to believe the self-identification is true, the BSO may engage in additional questioning, in private, to verify the individual's status.

Where the BSO continues to have serious reason to doubt the individual's self-identification, the BSO shall defer to the supervising officer for a final determination.

If not previously known that the person being searched is transsexual or intersexed but it becomes evident at any point during the personal search that this is the case, BSOs will immediately stop the personal search and offer the individual the choice of the sex of the BSOs who will continue the personal search, as previously described.

As always, any instances that require a BSO to use force must be handled in accordance with his/her training and the CBSA Policy on the Use of Force

This bulletin should be read in conjunction with Part 6, Chapter 6 of the CBSA Enforcement Manual
and Citizenship and Immigration Canada Enforcement Manual 12

Contact Information:

Traveller Border Programs Division

Any questions regarding this bulletin should be directed to the Traveller Border Programs Division via email at

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Updated:

Additional bulletins:

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 6

PERSONAL SEARCH POLICY AND PROCEDURES

23/02/12

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to detect, detain, arrest, and to conduct personal searches on persons entering Canada suspected of having concealed contraband on or about their person (i.e. body packed, swallowed, within body cavities).

DEFINITIONS

2. Refer to chapter 11 – Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 – allows the designation of areas as customs controlled areas. Section 11.3 – owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
4. Section 98 – provides that a border services officer (BSO) may search any person who the officer suspects on reasonable grounds has goods concealed on or about their person that may contravene the Act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other act of Parliament. The person has the right to be taken before a senior officer to object to the search. It is up to the senior officer at this point to determine if there are reasonable grounds to conduct a search. Only officers of the same sex as a person may search them and if an officer of the same sex is not available, an officer may authorize any suitable person of the same sex to perform the search. The authority is limited to:
 - a) any person who has arrived in Canada, within a reasonable time after their arrival,
 - b) any person about to leave Canada, at any time prior to their departure, or
 - c) any person who has had access to an area designated for persons leaving Canada and has left the area, but has not left Canada, within a reasonable time after they leave the designated area.

Note: The Supreme Court of Canada has interpreted that Section 98 extends to searches to determine whether goods are concealed within the body.

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5. Section 99.2 – authorizes a border services officer to search a person, including prescribed persons or members of a prescribed class of persons, leaving a customs controlled area, if they have reasonable grounds to suspect the person has goods concealed on or about their person that may contravene the act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other act of Parliament. The person has the right to be taken before a senior officer to object to the search. It is up to the senior officer to determine if there are reasonable grounds to conduct a search. Only officers of the same sex as the person will search them and if an officer of the same sex is not available, an officer may authorize any suitable person of the same sex to perform the search.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

6. Section 15 – authorizes border services officers to search any person, if they have reasonable grounds to suspect that a person has concealed currency or monetary instruments that are greater than the amount prescribed on or about their person and have not reported it. The person has the right to be taken before a senior officer to object to the search. It is up to the senior officer to determine if there are reasonable grounds to conduct a search. Only officers of the same sex as a person may search them and if an officer of the same sex is not available, an officer may authorize any suitable person of the same sex to perform the search. The authority is limited to persons:
 - a) arriving in Canada, within a reasonable time after their arrival,
 - b) about to leave Canada, at any time prior to their departure, or
 - c) who has had access to an area designated for persons leaving Canada and has left the area but has not left Canada, within a reasonable time after they leave the designated area.

The Canadian Charter of Rights and Freedoms

7. Section 8 – states everyone has the right to be secure against unreasonable search or seizure.
8. Section 9 – states everyone has the right not to be arbitrarily detained or imprisoned.
9. Section 10 – states everyone has the right on arrest or detention:
 - a) to be informed promptly of the reasons for arrest or detention;

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- b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.
10. In *R. v. Simmons*, the Supreme Court of Canada held that for persons entering Canada, the degree of personal privacy reasonably expected at customs is lower than it is in most situations. Searches performed by customs officers are reasonable based on a standard of reasonable grounds to “suspect”.
11. In the *R. v. Monney* decision, the Supreme Court of Canada re-affirmed the decision of *R. v. Simmons* and held that the authority of section 98 extends to the collection of body wastes. Customs officers have the authority to detain persons for the purposes of collecting samples of bowel movements under monitored conditions where they have reasonable grounds to “suspect” these wastes contain evidence of a contravention.
12. The Supreme Court of Canada has divided the types of searches that customs officers perform into three categories based on the *Charter* issues. The categories are as follows:
- a) The first category of search involves the routine questioning of persons arriving in Canada, the inspection of baggage, pockets, wallets, and purses, and the pat down of outer clothing. The Court viewed these as part of routine processing, which does not raise *Charter* concerns.
- Note: See Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to pocket searches for evidence.
- b) The second category of search is that which involves the removal of clothing (disrobement). Searches of the second category are viewed as detentions that invoke rights such as the right to be informed of the reasons for the detention and the right to retain and instruct counsel. For a category two search, which includes the collection of body wastes, officers must have “reasonable grounds” to suspect that the person has secreted contraband on or about his/her body.
 - c) The third category is that which involves actual physical contact for examination of the body, (i.e., the administration of x-rays, or the probing of body cavities). A third category search must be considered to be, at a minimum, also a detention.

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Note: Neither category two or three searches are considered “routine” processes and are deemed to constitute a detention within the meaning of Section 9 of the *Canadian Charter of Rights and Freedoms*.

Criminal Code of Canada

13. Section 2 – defines border services officers as “peace officers” when performing any duty in the administration of the *Customs Act*.
14. Section 25 – states that as “peace officers” border services officers, with reasonable grounds, are justified in using only as much force as is necessary to complete a search.

Note: Refer to Part Six, Chapter Five, Use of Force Policy and Procedures.

15. Section 26 – states that officers who use excessive force are criminally responsible for their actions.

BACKGROUND

16. For years, border services officers have been detecting persons who have swallowed drugs, inserted drugs into body orifices, and/or packed currency and/or drugs around their bodies to circumvent the law and bring it illegally into Canada. Although less prevalent, other contraband such as jewellery has been smuggled in this manner as well.
17. To discover if suspicions of contraband concealed on or about a person are correct, it may be necessary to conduct a personal search. Border services officers have the authority to conduct personal searches in accordance with section 98 of the *Customs Act*.
18. In terms of legal authorities in this regard, in *R. v Monney*, the Supreme Court of Canada ruled that under section 98 of the *Customs Act*, a customs officer may search a traveller, providing the officer suspects on reasonable grounds that contraband has been “secreted on or about his person” and that the search occurs “within a reasonable time” of the person’s arrival in Canada. The phrase “secreted on or about his person” not only refers to prohibited material on or about the surface of a person’s body but also secreted or concealed within their body.

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19. The Supreme Court ruling further stated that the actions of the customs officers in detaining Monney in a “drug loo facility” and conducting a “bedpan vigil” amounted to a search within the second of the three categories of border searches established in the *Simmons* case and were reasonable for the purposes of section 8 of the Charter.
20. The Court found that a passive “bedpan vigil” is not as invasive as a body cavity search or medical procedures such as the administration of emetics.

PURPOSE AND SCOPE

21. The purpose of this policy is to guide border services officers in the personal search, including monitored bowel movements and cavity search, of persons suspected of attempting to smuggle contraband.
22. This chapter is an extension of Part Six, Chapter One, Arrest and Detention and Chapter Two, Care and Control of Persons in Custody and must be used in conjunction with them.
23. This policy applies to all border services officers.

POLICY GUIDELINES

Approval

24. After completing all routine customs processing, if a border services officer has reasonable grounds to suspect that a person has secreted contraband on or about their body, they will convey their suspicions to a senior officer.

Note: If border services officers are processing more than one traveller, reasonable grounds must be established for each individual and officers must be able to articulate their suspicions for each individual traveller.

25. Border Services officers must obtain approval from a senior officer to proceed with the detention of a person for a personal search.

Note 1: If border services officers are obtaining approval for more than one traveller, they must obtain this approval for each traveller.

Note 2: A personal search may include a monitored bowel movement. If the search involves monitored bowel movements or a visit to a medical facility, the approval must be in writing.

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Rights and Cautions

26. Prior to undergoing a personal search under section 98 of the *Customs Act*, a person must be under detention and, therefore, must be advised of their rights and cautioned and given the opportunity to contact counsel.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

27. Persons must be directed to read the section 98 poster or section 98 in the *Customs Act*.
28. If persons have difficulty reading, officers will read the provision of section 98 to them.
29. Persons must be asked if they understand section 98 and be asked whether they wish to consult a senior officer.
30. If a person does not understand Section 98, its meaning must be explained to them in words or a language that is understood. After the meaning of section 98 is explained to the traveller in a language that is understood, the officer should take notes of what was explained to the traveller.
31. Officers must take reasonable steps to obtain an interpreter or other suitable person capable of speaking the language of a person when a language barrier is identified.
32. Persons using an interpreter or other suitable person must be re-informed through the interpreter or other suitable person of the detention, their right to retain and instruct counsel, and of section 98, all prior to the commencement of any search.
33. Statements made by an individual prior to their detention and/or arrest may be considered to be spontaneous utterances and may be admissible into evidence. These statements, and the circumstances in which they were made, should be recorded into the notebooks of officers. Persons who admit to unlawful conduct, and who have not been previously cautioned concerning the making of statements, should be cautioned concerning the making of further statements.
34. Officers must record in their notebooks the time at which the rights/cautions were given, the answers received when asked if the rights/cautions were understood, as well as the decision made by the person concerning contacting counsel and being taken before a senior officer.

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Contesting Grounds under Section 98

35. When a person requests to speak to a senior officer, or elects to contest the reasonable grounds for a search under section 98, the officer requesting the search will advise a senior officer of the reasonable grounds.

Note: At ports of entry where a senior officer (i.e. superintendent, chief, manager) is not available, border services officers will telephone the closest CBSA office where a senior officer is in charge. Persons will be allowed to talk to the senior officer by telephone.

36. The searching officer will ensure that the person has had the opportunity to verbally advise the senior officer of their objection.
37. When a person talks to a senior officer, the senior officer must deliver a secondary caution.
38. Senior officers will assess reasonable grounds and decide whether the search is to take place. The senior officer reviewing the grounds cannot be the same person who approved the original request to conduct the search. If a second senior officer is not available, one must be contacted by phone.

Note: In a case where a personal search is to be conducted on more than one traveller, the senior officer must hear the objections of any traveller in the group who requests a senior officer, or who contests the search. Reasonable grounds must be reviewed and approved for each traveller on an individual basis.

39. Senior officers who review the grounds for conducting a search must record in their notebook all contact with the suspect person(s), whether or not they approved or denied the personal search and the reasons for their decision.

Officer Health and Safety

40. If a frisk for officer safety has not yet been conducted, prior to entering the search room, immediately after a person has been advised of their rights or as a simultaneous action, a frisk must be performed as a safety precaution for the searching officers. All detainees are to be frisked prior to entering a search room.

Note: Refer to Chapter Six, Part One, Arrest and Detention Policy and Procedures for guidelines on conducting frisks for officer safety.

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41. Officers will discontinue personal searches when they find that because of a frisk for officer safety their reasonable grounds for conducting a further personal search have disappeared. For example, if an officer suspected the person of carrying a body pack and the frisk revealed no such pack, the personal search would be discontinued.
42. Officers conducting personal searches will wear protective gloves. Officers may also wear safety glasses and/or masks, if they feel it is necessary (e.g. when the person being searched is suspected of being a carrier of a life threatening virus or a communicable disease).
43. Officers will shield any breaks or lesions on their skin (i.e. with dressings, bandages, barrier creams, etc.) to protect them from contamination.
44. Officers will be especially careful when handling faeces and when they come into contact with bodily secretions such as blood, urine, sputum, vaginal secretions, saliva, and vomit or areas soiled by any of these.
- 45.

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Note: An Internal Carriers and Body Packers training course is recommended for all officers and supervisors involved in personal searches.

46. To justify a detention, officers will record in their notebook all reasonable grounds, indicators, and non-verbal and verbal responses, including inculpatory and exculpatory statements relating to a person.

Note: If an incident involves more than one traveller, reasonable grounds, indicators and non-verbal and verbal responses must be recorded for each individual traveller.

47. Officers must get the approval of a senior officer to perform a personal search.
48. Before a person is escorted into a search room, it must be made sterile and devoid of any loose articles.
49. All personal searches are to be conducted by an officer of the same sex as the person being searched.
50. An assisting officer of the same sex as the person must also be present.

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Note: Refer to Appendix A, Authorizing Assistance for a Personal Search, for further instructions if two officers of the same sex as the person are not available.

51. Officers will keep persons undergoing a personal search under constant observation, as continuity of evidence must be maintained throughout the search process.
52. Officers will ensure that personal searches are conducted in a professional and dignified manner.
53. Officers will politely answer but without elaboration, particularly if an argument may result, when a person asks any questions.
54. Officers may ask a person to remove some or all clothing as is needed to conduct a personal search for contraband. The person is obligated to comply.
55. Officers may ask a person to bend over or squat at which time the vagina and anus areas may be viewed for indicators (strings, lubricants, etc.) that would suggest the insertion of foreign objects into the cavity. Persons may be asked to spread their buttocks.
56. When illicit contraband is found during a personal search, persons may immediately be placed under arrest, if circumstances warrant, and advised of the reason for the arrest, their right to retain and instruct counsel, and cautioned about making any incriminating statements.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

57. Officers will record the time of the arrest as well as all answers received to the rights and caution statements in their notebook and on the Personal Search/Arrest Report in ICES or for non-automated ports on a paper version of the form.
58. At the time of arrest, even if a person requests to contact counsel, personal searches already underway will be continued until completed. Upon completion of the search, persons must be allowed to contact counsel immediately.
59. At the conclusion of a search, officers will inform the person that the search is complete and, if they are no longer detained or under arrest, that they are free to leave.

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60. Unless they are still detained or have been arrested, officers will allow a person to get dressed in private.
61. Officers will watch detained and arrested persons closely as they dress in case there is a need to secure weapons such as needles or razor blades, or additional contraband that have been concealed but not discovered during the search.
62. Officers will escort detained or arrested persons to a detention cell, a secure area of the customs facility, or where applicable to a Specimen Isolation Unit (SIU) room or appropriate alternative.
63. When an enforcement action has resulted from a personal search, but the person is no longer being detained and has not been placed under arrest, officers will inform them that certain information is needed to complete the enforcement action and that their co-operation would be appreciated and will facilitate their departure from the CBSA area.

Note: Refer to Part Six, Chapter Two, Care and Control of Persons in Custody Policy and Procedures.

Use of Force to Complete Search

Note: Refer to Part Six, Chapter Five, Use of Force Policy and Procedures for detailed guidelines.

64. Officers should attempt to control difficult situations without jeopardizing their safety, the safety of another officer or a member of the public.

Note: Verbal intervention should be the principal method of trying to obtain a person's co-operation.

65. Officers will assess their ability to use force to conduct the search and are justified in using only as much force as necessary to conduct the search as long as they have reasonable grounds.

Note: Refer to Part Six, Chapter Five, Use of Force Policy and Procedures for detailed guidelines.

66. Officers may restrain a person, if they attempt to leave the CBSA area before undergoing a personal search. In addition, persons may be arrested for resisting, hindering, and/or wilfully obstructing a peace officer in the performance of their duties.

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Body Packs

67. When body packs are discovered during the course of a frisk, personal search, or at any other time, persons may be placed under arrest immediately, advised of the reason for arrest, their right to retain and instruct counsel, and cautioned.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

68. As deemed necessary for evidentiary purposes, officers may take pictures of persons with body packs in place with their clothes on, in various stages of undress, and entirely disrobed.
69. officers may allow persons to remove body packs themselves.

Vaginal or Anal Inserts

70. When vaginal or anal inserts are discovered during the course of a personal search, persons may be placed under arrest immediately, advised of the reason for arrest, their right to retain and instruct counsel and cautioned about making any incriminating statements. It is recommended that the officers read the reasons for arrest, rights to counsel and cautions directly from their issued notebook insert CE1-1 Officers Reference Booklet.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

71. When vaginal or anal inserts are discovered during a personal search, officers will offer to call medical assistance and proceed to a medical facility, if requested by the person.
72. Under no circumstances will officers attempt to remove any objects from a person's body cavities.
73. Officers may allow persons to remove a vaginal or anal insert themselves, if they can remove the insert without complications and are willing to do so.
74. Officers may transport the person to a medical facility for removal of inserts:
- a)
 - b)

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c)

d)

Note: Refer to Part 6, Chapter 12 Transporting Persons Under Arrest or Detention.

Monitored Bowel Movements

75. Before a person may be detained for the purposes of a monitored bowel movement, all routine CBSA processing must be completed and a personal search conducted to eliminate the possibility that the person is importing contraband on their body, in their baggage, or in their vehicle (where applicable).
76. To proceed to a Specimen Isolation Unit (SIU) room or reasonable alternative for monitored bowel movements, a senior officer's approval and one of the following must occur:
 - a) the person admitted to ingesting drugs;
 - b) the person admitted to inserting drugs into a body cavity;
 - c) the officer has formulated by way of indicators the suspicion that the person has ingested drugs and a supervisor has given written approval based on these grounds; or
 - d) the officer has witnessed an orifice with suspect drugs inside.
77. Persons detained for the purposes of producing a bowel movement will be re-advised of the right to retain and instruct counsel, their right to be brought before a senior officer and be given as many additional opportunities to contact counsel as is reasonable.
78. A person who admits to carrying drugs internally may be placed under arrest, advised of the reason for arrest, advised of their right to retain and instruct counsel and cautioned about making any incriminating statements, but need not be turned over to the police until all evidence is produced.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

79. The health and safety of persons suspected of carrying drugs internally will be considered at all times.

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80. Medical assistance will be sought immediately at the first sign of illness or whenever a detained person requests medical attention.
81. All persons, regardless of condition, must be advised that medical assistance can and will be made available, if requested or required.
82. Monitored bowel movements will be conducted using an authorized SIU, a portable toilet or in cases where neither of these are available, a secured washroom facility.
83. Public washrooms will not be used as a secured washroom facility.
- 84.
- 85.
86. At any point in a detention, where the officer believes the detention will exceed 24 hours, the person will be brought before a Justice of the Peace to have the grounds for detention reviewed. A detention cannot exceed 24 hours without such a review of the grounds.
87. A bowel movement that produces evidence of an offence may result in the immediate arrest of the person.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

Cases of Medical Emergency

88. Persons may experience medical complications as the result of inserting or ingesting drugs or complications caused by other medical conditions. In either case, medical assistance will be sought immediately.
89. When a person's health is in jeopardy, an ambulance will be called and one officer, of the same sex as the person, preferably the searching officer, must accompany the person in the ambulance to the medical facility.
90. Officers will ensure medical facility security is notified when there is a detained person in the facility.
91. Where medical staff determines that the person must stay in hospital, officers will ensure the police are contacted, advised of the particulars, and requested to attend.

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92. An officer must stay with persons at all times until they are turned over to the police.
93. Once discharged, persons will be transported back to the CBSA port following the approved policy and procedures.

X-rays, Probing, and Removal

94. The administration of x-rays and the probing of and removal of contraband from body cavities by medical personnel can only be performed when:
 - a) the person voluntarily provides an informed written consent; or
 - b) when they have been arrested and the x-ray/probe/removal is necessary for the health and safety of the person.
95. Officers are to utilize the expertise of qualified medical personnel and obtain their assistance in identifying any obstructions or blockages found while examining an x-ray or conducting a probe.

Note: Refer to Part 6, Chapter 12 Transporting Persons Under Arrest or Detention.

96. Section 98 of the *Customs Act* does not authorize an officer to demand that a traveller submit to an x-ray. To expedite the monitored bowel movement process, the CBSA allows travellers who are detained on suspicion of internally carrying illicit drugs to volunteer to be x-rayed by a medical professional. In order to facilitate this process and to document the traveller's consent to this procedure, the traveller is asked to sign form K-155, *X-ray Consent/Waiver*. Having signed this form, it remains that the individual may withdraw his or her consent at any time prior to the x-ray being taken.
97. Despite the fact that the traveller has volunteered to undergo the x-ray and has consented to allow the medical staff to provide the results to the CBSA, the traveller continues to be lawfully detained during this time. In this respect, CBSA officials continue to have all the same powers and authorities to limit the traveller's liberty and to supervise his or her actions as if the traveller was lawfully detained in a cell at a port of entry.

98.

Medical and Ambulance Fees

100. The CBSA will pay the costs associated with the x-ray examination of a person for purposes of determining, if they have ingested contraband.
101. The person or their health or medical insurance will pay costs for all other medical related expenses except in cases where the person has no cash, credit card or health or medical insurance.
102. In-province residents must provide their health card and medical insurance information to the medical facility for billing of other medical related expenses.
103. For out of province or out of country residents, officers will make all reasonable attempts to have the person pay for their medical attention and/or ambulance fees.
104. The CBSA must accept responsibility for payment to the medical facility when the person (out of province or out of country resident), does not supply a health card, medical insurance card, cash or credit card. In such cases, officers will supply the hospital with their manager's name, address, and phone number for billing purposes.
105. A person's money may be used to purchase medication, only if they grant consent.
106. Officers will advise the attending physician when a person has no coverage or money and medication is prescribed.

Note: In these cases, the physician may choose to dispense hospital medications.
107. Officers will place receipts for medication purchased by a person in a personal belongings envelope for return to them.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody.

ROLES AND RESPONSIBILITIES

Border Services Officers

108. Border services officers are responsible for:

- a) adhering to this policy and procedures;
- b) conducting personal searches, which may include monitored bowel movements, transporting persons to a medical facility, and monitoring cavity searches where and when so directed;
- c) following all necessary health and safety precautions, including ensuring they have the necessary vaccinations; and
- d) assist other officers by clearing search and SIU rooms, preparing evidence bags, protective gloves, and paperwork, and keeping detailed, accurate notes.

Senior officers

109. Senior officers are responsible for:

- a) evaluating the grounds for suspicion for each individual traveller as presented by border services officers and, where warranted, authorizing monitored bowel movements, and transport of persons to a medical facility;
- b) providing guidance and technical assistance to lead and assisting officers;
- c) ensuring search and SIU rooms are available when required;
- d) assisting in the provision of evidence bags, cameras, and protective gloves;
- e) notifying all involved officers when a seizure has commenced;
- f) advising the regional intelligence officer (RIO) and receiving police force when required;
- g) ensuring that the policies and procedures related to personal searches, transporting persons to a medical facility and cavity searches are adhered to by border services officers; and

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- h) taking appropriate corrective action on any breaches of the policy.

Regional Intelligence Officers

110. Regional Intelligence Officers are responsible for:

- a) ensuring that current intelligence related to smuggling of contraband is assessed according to the validity and level of risk associated with the smuggling of controlled substances; and
- b) ensuring that lookouts are issued and files containing information on known or suspected drug smugglers are maintained.

Intelligence Directorate and Criminal Investigations Division

111. The Intelligence Directorate and Criminal Investigations Division are responsible for:

- a) developing, modifying, and approving all policies in accordance with court jurisprudence related to the administration of personal searches, including the collection and analysis of body waste, transporting of persons to a medical facility and cavity searches;
- b) ongoing development and support of monitored bowel movement tools and techniques;
- c) ensuring consistent application of the policy in all regions; and
- d) providing functional guidance and training.

PROCEDURES

Personal Search

112. Request the aid of an assisting officer.

113. Ensure the person is under constant observation.

114. Notify the responsible senior officer of the reasons for performing a personal search and obtain approval to proceed.

Note 1: It is recommended that senior officers review the grounds written in the officers' notebook and if they approve the search, they will sign, date, time, and record their badge number underneath the officers noted grounds. Senior officers should also record the person's data in their

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notebook, indicate that they authorized the search, and that they agreed with the grounds presented.

Note 2: In cases where more than one traveller is involved, border services officers must notify the senior officer of the reasons for performing a personal search and obtain approval to proceed for each individual traveller.

115. Inform the person that they are being detained for the purposes of a personal search under section 98 of the *Customs Act* (or section 15 of the PCMLTFA) and the reason for the detention. One of the following statements is recommended:

a) For Drugs or other contraband:

"I have reasonable grounds to suspect that you are carrying non-reported goods (or suspected drugs) on or about your person and I am detaining you for the purposes of a personal search as authorized by section 98 of the *Customs Act*."

b) For Currency of Monetary Instruments:

"I have reasonable grounds to suspect that you are carrying non-reported currency or monetary instruments above the prescribed amount on or about your person and I am detaining you for the purposes of a personal search as authorized by section 15 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*."

Note: The Officer's Reference Booklet also contains a version of this statement to ensure it is easily available to on-site officers.

116. Advise the person that they have the right to retain and instruct counsel immediately.

117. Also caution the person to ensure that any statement or admission of guilt made by a person after detention or arrest is admissible evidence in court.

118.

119. Allow the person to contact counsel.

Note: If a call takes place in a closed or private room, the door to the room may be closed only if the person can still be observed (i.e., through a window). If a call takes place in an open room, all officers will maintain an appropriate distance so that the conversation is private and cannot be overheard.

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120. At any time when a person has admitted to unlawful conduct and has not been previously cautioned, immediately caution them concerning the making of any further statements.

121. Record in your notebook the person's answers to their rights and cautions, whether they elected to contact counsel, and if counsel was reached. Include the name of counsel and phone number used to contact counsel.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures for detailed guidelines and wording regarding rights and cautions.

122. Direct the assisting officer to clear and make safe the search room.

123. Make a notebook entry of the fact that the search room is clear and if applicable, any findings made while preparing it.

124. Ensure the person reads section 98 of the *Customs Act* (or section 15 of the PCMLTFA) or read section 98 and/or section 15 of the PCMLTFA to the person.

125. Ensure that they understand section 98 (or section 15 of the PCMLTFA). If not, explain section 98 and/or section 15 of the PCMLTFA to them in words they can understand. The officer should take notes of what was explained to the traveller.

126. Upon request, bring the person before a senior officer for a review of the reasonable grounds for the search. The officer reviewing the grounds cannot be the same person who approved the original request to conduct the search.

127. The senior officer must ensure that a secondary caution is provided as follows:

"If you have spoken to any police officer or to anyone, or if any such person has spoken to you in connection with this case, I want it clearly understood that I do not want it to influence you in making any statement."

128. Protective gloves, masks and protective eyewear may be worn, if necessary.

129. Instruct the person to remove all items from his/her pockets.

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130. Document these items in the notebook and later record the information on the personal effects record portion of a Personal Search/Arrest Report form in ICES or, for non-automated ports, complete a paper version of the form. Document the instructions and items removed chronologically.
131. Instruct the person to remove each piece of clothing,
132. Examine each item of clothing for any hidden contraband or evidence such as receipts.
133. Closely examine waistbands and seams of garments for evidence
134. After examination, fold each piece of clothing and place it on a table or chair.
135. Once the person is disrobed, view all exterior parts of the body such as the hair, under-arms, legs, and bottoms of the feet,
136. If necessary, instruct the person to bend over and/or squat and look for indicators (strings, lubricants, etc.) that suggest the insertion of foreign objects into body cavities. Instruct the person to spread the buttocks if necessary.
137. Determine if suspicion still exists for inserted or ingested contraband.
138. If circumstances warrant, arrest persons when contraband is discovered or when they have admitted to concealing contraband and advise them of the reason for the arrest, their right to retain and instruct counsel, and caution them about making any incriminating statements.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.
139. If a person is no longer under detention and is not under arrest, inform them that the search is complete and they are free to leave or where concealed goods have been discovered, that their co-operation in completing enforcement action documentation will facilitate their departure from the CBSA area.
140. Advise persons not under detention or arrest that they may get dressed in private.
141. Continue to observe persons under detention or arrest while they dress.

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142. Escort detained or arrested persons to a detention cell, secure area of the CBSA facility, or SIU room for further processing.

Note: Refer to Part Six, Chapter Two, Care and Control of Persons in Custody.

143. Take detailed notes throughout the process, including all reasonable grounds, a list of all indicators observed (including verbal inculpatory and exculpatory statements and non-verbal responses), time of contact, detention, arrest, contact of counsel, health checks, eating and drinking, etc.
144. Record all findings of a personal search on the Personal Search/Arrest Report form in ICES or for non-automated ports complete a paper version of the form.

Body Packs

145. If body packs are found, and if circumstances warrant, arrest the person, advise the person of the reason for the arrest, advise the person of his rights, and caution the person.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

146. Advise the senior officer on duty of the discovery of body packs.
147. Take pictures of the person dressed and in different stages of undress while the body packs are still in place.

Note: Photographs will serve as evidence in court. Photographs are considered documentary evidence and must be submitted under disclosure.

148. Instruct the person to carefully remove the packs one at a time and hand them to you. This option is only used, if the person is cooperative and poses no threat to themselves or the officers. If hostile, the person will remain handcuffed and the officer will be responsible for removing the packs or the person will be turned over to the responding police agency with the packs.
149. Take over the removal of the packs, if scissors or some other type of cutting instrument is required to remove the packs
150. Mark all evidence properly noting the location on the body from where it was retrieved. Place in evidence bags, seal, and mark. Cross-reference of evidence marking should also be included in the notebook.

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Note: Refer to Part Nine, Chapter Three, Statements and Evidence Policy and Procedures.

151. Seize as evidence any clothing such as body suits, leotards, and girdles that were used to conceal the packs.
152. Take detailed notes throughout the process.
153. Note all findings on the Personal Search/Arrest Report form in ICES or for non-automated ports complete a paper version of the form.

Anal or Vaginal Inserts

154. If anal and/or vaginal inserts are found, the person may be arrested.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

155. Advise the senior officer on duty of the discovery of anal and/or vaginal inserts.
156. Offer to contact medical assistance and proceed to a medical facility if requested by the person.
157. If the person agrees and can remove the insert without complications, provide them with protective gloves.
158. Allow them to remove the insert
- 159.
160. Tell the person to remove the insert

161. If at anytime the person encounters problems, call in medical assistance.
162. Once the insert is placed in an evidence bag, note the location on the body from where it was retrieved, properly seal, and mark the bag.

Note: Refer to Part Nine, Chapter Three, Statements and Evidence Policy and Procedures.

163. Take detailed notes throughout the process.

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164. Record all findings on a Personal Search/Arrest Report form in ICES or for non-automated ports complete a paper version of the form.

Monitored Bowel Movement

Specimen Isolation Unit

165. Articulate the grounds to the senior officer on duty and request approval to move the person into the SIU room and perform a monitored bowel movement. Senior officers must review the grounds written in the officers' notebook and if they approve the search, they sign, date, time, and record their badge number underneath the officers noted grounds. Senior officers should also record the person's identification information in their notebook, indicate that they authorized the search, and that they agreed with the grounds presented.
166. Ask the assisting officer to prepare the SIU room, make it sterile, and clear the SIU.
167. Upon entering the SIU room, detain or arrest the person for the ingestion of drugs.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

168. Inform the person of the reason for the monitored bowel movement. The following statement is recommended:
- "You are being detained (or arrested) on suspicion of having concealed drugs within your body. You have the right to have the validity of this detention reviewed by a court and to be released if the court determines the detention is unlawful. Do you understand? Do you wish to discuss this with a lawyer?"
169. Provide the person with access to a phone if they request to contact counsel.
170. Throughout the proceedings in the SIU room, continue note taking as lead and assisting officers, adding indicators noted during your time in the SIU room to the original list of indicators.
171. Before proceeding further, offer medical assistance and proceed to a medical facility if requested by the person.

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172. Throughout the proceedings in the SIU room, regularly ask the person about their physical condition and look for any possible signs of distress or deterioration.
173. Advise the person of the procedures with respect to the SIU itself. For example, where to sit, where you and the assisting officer will be located, where their bowel movement will go, where it will be cleaned, and where the evidence will be placed.
174. Wear protective gloves throughout the time of contact with the person, as direct contact with bodily secretions is expected and there may also be unexpected contact with other bodily fluids.
175. In cases where exposure to bodily fluids has occurred, discard gloves in a secure, lined trash container (peel them off rolling the glove outside in), wash hands, and clean the affected area with disinfectant.
176. Tell the person to indicate to an officer when they are ready to produce a bowel movement.
177. Tell the person to keep their hands on their knees.
- 178.
179. Turn on the SIU and instruct the person to proceed with the bowel movement.
180. When the person has produced a bowel movement, clean away any faecal matter from the suspected drugs.
181. Place the drugs from the first bowel movement in two separate evidence bags as follows:
 - a) Place one single piece of evidence (pellet, condom, or balloon) in an evidence bag and mark it 1A.
 - b) Place the remainder of the first bowel movement in a second evidence bag and mark it 1B.
182. Advise the senior officer on duty of the production of the evidence.
183. Place further bowel movements in separate bags and mark them sequentially, coinciding with each movement (i.e., the second bowel movement will be placed in an evidence bag and marked 2, the third 3, etc.).

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184. As soon as it appears that the detention period will exceed 24 hours, arrange to take the person before a Justice of the Peace for a hearing. The Justice of the Peace may validate a longer detention period. The appearance before a Justice of the Peace must be done before the person has been in custody for 24 hours. When it appears at the beginning of a detention that the person intends to hold out as long as possible rather than admit to ingesting contraband, take them to the Justice of the Peace immediately rather than wait until the time limit approaches.

Note: In most cases, the border service officer will be required to give evidence at the validation of detention. The officer will be required to testify to the indicators that were uncovered during dealings with the person to show reasonable and probable grounds to continue the detention.

185. Contact the police to make the necessary arrangements for transportation to a Justice of the Peace.
186. Provide the relief officer with a copy of the list of indicators before going off-shift.
187. The relief officer will record new indicators in their notebook and on the previous officer's list of indicators.
188. Treat this list as a piece of evidence. It may be entered as evidence and disclosed to the crown and defence in court proceedings.
189. Upon exiting the SIU room, immediately remove any protective clothing such as masks, and gloves and discard in a secure, lined trash container (peel gloves off by rolling outside in), and wash hands.
190. Once a relief officer enters the SIU room, they now become the seizing officer if any evidence is produced.
191. During the person's stay in the SIU room, offer them food and/or drink at the standard times for breakfast, lunch, and dinner.

Note: Acceptable drinks are water, soft drinks, and fruit juices (excluding prune). Any type of food is acceptable.

Note: Take into consideration the persons' cultural and religious beliefs pertaining to food.

192. Advise them that the CBSA will pay for any food/meals within reason.

Note: The cost of food for the person must not exceed the meal allowance for that particular meal.

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Note: Officers are not expected to use their own money. They may use money from petty cash. Receipts are required.

193. Ask if the person has any allergies before obtaining food or drinks.
194. Take detailed notes throughout the process, including all reasonable grounds, a list of all indicators observed (including non-verbal and verbal inculpatory and exculpatory statements and responses), time of contact, detention, arrest, contact of counsel, health checks, attempts at bowel movements, actual bowel movements, eating and drinking, what was consumed, etc.
195. Note all findings on a Personal Search/Arrest Report form in ICES or, for non-automated ports, complete a paper version of the form.

Alternatives to Specimen Isolation Unit

196. Where no SIU is available, use an alternative method to collect the bowel movement such as:
 - a) a hospital-type bedpan;
 - b) a portable toilet; or
 - c) a private washroom where the water has been turned off and all water is drained from the toilet tank. Use a garbage bag over the toilet seat to collect the bowel movement.

Note: Follow all other procedures outlined in the *Specimen Isolation Unit* section of this chapter.

REFERENCES

197. *Customs Act*
R. v. Simmons, Supreme Court of Canada Decision
R. v. Monney, Supreme Court of Canada Decision
Youth Criminal Justice Act
Criminal Code of Canada
Occupational Health and Safety Act
Internal Carriers and Body Packers, Contraband Enforcement Training
ICES User Reference Manual
Public Service Employment Regulations
CBSA Finance and Administration Manual
CBSA Motor Vehicle Operation Policy

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 6

PERSONAL SEARCH POLICY AND PROCEDURES

Appendix A

AUTHORIZING ASSISTANCE FOR A PERSONAL SEARCH

Appendix A

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) that during a personal search on persons entering Canada suspected of having concealed contraband on or about their person (i.e. body packed), only officers of the same sex as the person may search them.

AUTHORITIES

Customs Act

2. Section 98(1) – Provides that a border services officer may search any person:
 - a) arriving in Canada, within a reasonable time after their arrival,
 - b) about to leave Canada, at any time prior to their departure, or
 - c) who has had access to an area designated for persons leaving Canada and has left the area but has not left Canada, within a reasonable time after they leave the designated area,who the officer suspects on reasonable grounds has goods concealed on or about their person that may contravene the Act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other Act of Parliament.
3. Section 98(4) – States that no person shall be searched under Section 98 by a person who is not of the same sex, and if there is no officer of the same sex at the place at which the search is to take place, an officer may authorize any suitable person of the same sex to perform the search.
4. Section 99.2 – Authorizes a border services officer to search a person, including prescribed persons or members of a prescribed class of persons, leaving a CBSA controlled area if they have reasonable grounds to suspect the person has goods concealed on or about their person that may contravene the Act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other Act of Parliament.

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Personal Search

Appendix A

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

5. Section 15 – Authorizes border services officers to search any person:

- a) arriving in Canada, within a reasonable time after their arrival,
- b) about to leave Canada, at any time prior to their departure, or
- c) who has had access to an area designated for persons leaving Canada and has left the area but has not left Canada, within a reasonable time after they leave the designated area,

if they have reasonable grounds to suspect that a person has concealed currency or monetary instruments that are greater than the amount prescribed on or about their person and have not reported it.

Criminal Code of Canada

- 6. Section 2 – Defines border services officers as “peace officers” when performing any duty in the administration of the *Customs Act*.
- 7. Section 25 – states that as “peace officers” border services officers, with reasonable grounds, are justified in using only as much force as is necessary to complete a search.
- 8. Section 26 – States that officers who use excessive force are criminally responsible for their actions.

The Canadian Charter of Rights and Freedoms

- 9. Section 8 – States everyone has the right to be secure against unreasonable search or seizure.
- 10. Section 9 – States everyone has the right not to be arbitrarily detained or imprisoned.
- 11. Section 10 – States everyone has the right on arrest or detention:
 - a) to be informed promptly of the reasons for arrest or detention;
 - b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Appendix A

PURPOSE AND SCOPE

12. The purpose of this policy is to guide border services officers when another member of the CBSA is not available to assist in a personal search.
13. This policy must be used in conjunction with the following chapters of the Enforcement Manual:
 - a) Part Six, Chapter One, Arrest and Detention;
 - b) Part Six, Chapter Two, Care and Control of Persons in Custody; and
 - c) Part Six, Chapter Six, Personal Search Policy and Procedures.
14. This policy applies to all border services officers.

POLICY GUIDELINES

15. As per Section 98(4) of the *Customs Act*, if there is no border services officer of the same sex at the location at which a personal search is to take place, an officer may authorize any suitable person of the same sex to perform the search.
16. In order of priority by which they are to be contacted, the following is a list of suitable persons to assist a border services officer in a personal search:
 - a) an on duty border services officer from a nearby port of entry;
 - b) an off duty border services officer;
 - c) an employee of the CBSA;
 - d) an employee of the public service;
 - e) a Canadian police officer;
 - f) a Canadian person in a position of authority; or
 - g) a member of the travelling public.

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17. If no suitable person is readily available from Canada, the border services officer may request the assistance of United States authorities (i.e., Department of Homeland Security). The United States officer(s) must not carry a firearm when assisting in a personal search in Canada. In addition it must be explained to the United States officers that the personal search will be conducted under the authority of the *Customs Act*.
18. There is no obligation on the part of any person to assist with a personal search.

ROLES AND RESPONSIBILITIES

Border Services Officers

19. Border Services Officers are responsible for:
 - a) adhering to this policy and procedures;
 - b) conducting personal searches;
 - c) following all necessary health and safety precautions; and
 - d) assisting other officers by clearing search rooms, preparing evidence bags, protective gloves, and paperwork, and keeping detailed, accurate notes.

Senior Officers

20. Senior officers are responsible for:
 - a) evaluating the grounds for suspicion as presented by border services officers;
 - b) providing guidance and technical assistance to lead and assisting officers;
 - c) ensuring search rooms are available when required;
 - d) assisting in the provision of evidence bags, cameras, and protective gloves;
 - e) notifying all involved officers when a seizure has commenced;

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- f) advising the Regional Intelligence Officer (RIO) and receiving police force when required;
- g) ensuring that the policies and procedures related to personal searches are adhered to; and
- h) taking appropriate corrective action on any breaches of the policy.

PROCEDURES

Search by a Border Services Officer and a Non-employee of the CBSA

21. When a border services officer and a non-employee of the CBSA jointly conduct a personal search, the border services officer will be responsible for:
- a) notating the name of the person that will be assisting in the personal search;
 - b) clearly explaining to the individual to be searched that one of the persons conducting the search is not a CBSA officer;
 - c) clearly explaining to the non-employee assisting in the search that their role is to observe the examination;
 - d) being the lead in conducting the examination; and
 - e) following all other procedures for personal searches as per Part Six, Chapter Six of the Enforcement Manual.

Search by Two Non-employees of the CBSA

27. When two non-employees of the CBSA jointly conduct a personal search, one of these persons must be a law-enforcement officer.
28. The requesting border services officer must:
- a) notate all efforts made to contact a person to assist in the personal search;
 - b) notate the names of the persons that will be conducting the personal search;

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- c) clearly explain to the individual to be searched that the persons conducting the search are not CBSA officers;
- d) inform the searching persons of what you are anticipating to find in the personal search;
- e) inform the searching persons that at no time are they to touch the individual being searched;
- f) inform the searching persons that when they are satisfied that the examination will be non-resultant that the search may end;
- g) inform the searching persons that the individual to be searched has been cautioned and is not obliged to say anything;
- h) inform the searching persons that if they discover any contraband of evidence of an offence that they are to take possession of it and at the end of the search immediately hand it to the requesting border services officer;
- i) caution the individual and advise them of their rights under section 98 of the *Customs Act* and of their right to counsel;
- j) close the search room door and wait outside of the examination room;
- k) notate the start and end times of the search; and
- l) following the end of the search, the requesting officer will immediately take control of the individual being searched.

REFERENCES

Customs Act
Proceeds of Crime (Money Laundering) and Terrorist Financing Act
Criminal Code of Canada
The Canadian Charter of Rights and Freedoms
The Supreme Court of Canada

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) that suspect persons in United States (US) Preclearance areas be detained when the detention is lawful and is conducted in accordance with these policy guidelines, in conjunction with the policy on Arrest and Detention in EN Manual Part 6, Chapter 1; Arrest and Detention of Young Persons in EN Manual Part 6, Chapter 3; Personal Search Policy and Procedures in EN Manual Part 6, Chapter 6; and Notebooks in Part 8, Chapter 1.

AUTHORITIES

Preclearance Act (1999)

2. Subsection 6(1) authorizes the administration of preclearance laws in Canada in a preclearance area with respect to travellers who seek admission to, and with respect to goods to be imported into, the United States, subject to the Canadian Charter of Rights and Freedoms, the Canadian Bill of Rights and the Canadian Human Rights Act.
3. Subsection 22(1) authorizes a preclearance officer to detain any person if the officer suspects on reasonable grounds that a strip search¹ is necessary for the purpose of section 20 or 21 and, in that case, must without delay request a Canadian officer to conduct the search.
4. Subsection 22(2) authorizes Canadian officers, including CBSA officers, to conduct a strip search if the officer suspects on reasonable grounds that the search is necessary for the purpose of section 20 or 21. The preclearance officer may be present for the search.
5. Subsection 23(2) authorizes a CBSA senior officer to direct the traveller to be searched only if the officer suspects on reasonable grounds that the search is necessary for the purpose of section 21 or 22.
6. Subsection 24(2) requires the US preclearance officer to deliver any traveller detained under subsection (1) as soon as possible into the custody of a peace officer within the meaning of paragraph (c) of the definition peace officer in section 2 of the Criminal Code.
7. Subsection 24(1) authorizes a preclearance officer to detain any traveller if the officer believes on reasonable grounds that the traveller has contravened section 33 or has committed an offence under an Act of Parliament that is punishable by indictment or on summary conviction.

Canadian Charter of Rights and Freedoms

8. Section 9 – Everyone has the right not to be arbitrarily detained or imprisoned.
9. Section 10 – Everyone has the right on arrest or detention
 - a) to be informed promptly of the reasons therefor;
 - b) to retain and instruct counsel without delay and to be informed of that

¹ The term *strip search* under the *Preclearance Act* is equivalent to the term *personal search* under the *Customs Act*. Note that the US terminology for a personal search is a “partial strip”.

right; and

c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Note: The Supreme Court of Canada has said that the word “detention” indicates some form of compulsory restraint.

BACKGROUND

10. The *Preclearance Act* (1999) authorizes United States Customs and Border Protection (US CBP) to preclear travellers and goods in Canada subject to Canadian constitutional safeguards, within designated preclearance areas² in airports. While US CBP preclearance officers do not have authorities to arrest in Canada, they do have authorities to detain travellers in designated preclearance areas.

The *Preclearance Act* (1999) facilitates cross-border travel and movement of goods by allowing for the administration in Canada of those provisions of American law directly related to the admission of travellers and the importation of goods into the United States.

The administration of any provision of US law in Canada is subject to Canadian law, including the *Canadian Charter of Rights and Freedoms*, the *Canadian Bill of Rights* and the *Canadian Human Rights Act*.

11. A traveller may be detained by a US CBP preclearance officer if the officer believes the traveller has contravened Canadian law, or the officer suspects that a strip search is necessary. When a preclearance officer detains a traveller, they must transfer them as soon as possible to a Canadian officer, which includes a CBSA officer.

POLICY GUIDELINES

General

12. After receiving a request from US CBP to conduct a strip search, the Canadian officer must determine if there are reasonable grounds to suspect the search is necessary for the purposes of s.20 or s.21. In the case that there is doubt as to whether or not the individual has been provided with their *Charter* rights, the officer must provide those rights immediately.
13. If the Canadian officer determines that there are reasonable grounds to suspect a search is necessary, the officer will inform their Superintendent of the detention as soon as possible.

²A preclearance area is the limited and operationally contiguous part of an airport terminal designated by the Minister within which preclearance officers exercise specified powers and authorities. The area contains but is not limited to: the queuing area used exclusively for preclearance purposes clearly demarcated in front of the primary inspection area; primary and secondary examination areas; connecting corridors and all designated conveyances for precleared passengers used for the transportation of passengers between sterile areas of terminals or from the terminal to the departing aircraft.

14. The Canadian officer will inform the individual that they are being detained, the reason for the detention and provide the caution.
15. Individuals must indicate they understand, be asked if they wish to contact counsel, and be informed that they will be provided with access to a telephone if they wish to do so.
16. If the traveller exercises his right to be taken before a senior officer, the senior officer (i.e. superintendent, chief, manager) will determine whether there are reasonable grounds to suspect that a search is necessary.
17. CBSA officers will conduct the strip search in a suitable room in the US preclearance area. If a suitable room is not available in the US preclearance area, based on a CBSA officer's risk assessment, a traveller may be brought to the CBSA area.

Note: A US preclearance officer is authorized to observe the strip search if the US preclearance officer is of the same sex.

18. In the case where US CBP detains an in-transit passenger (e.g. the traveller has no status in Canada as they arrived from an international flight and reported directly to US CBP) on reasonable grounds to believe an offence was committed, US CBP is responsible for transferring that passenger to a Canadian officer (e.g. police, not CBSA). As this individual has no status in Canada, the CBSA will be contacted to determine the admissibility of the person and goods and complete necessary CBSA processing (e.g. immigration determination, transfer of inadmissible goods, etc).

Note: Immigration inadmissibility should be considered, and officers should determine whether it is necessary to defer the examination, prepare a report A44(1), prepare an Allowed to Leave, or issue a Temporary Resident Permit (TRP). Refer to ENF 1 Inadmissibility, ENF 2 Evaluating inadmissibility, ENF 4 Port of Entry Examinations, ENF 5 Writing 44(1) Reports, ENF 6 Writing 44(1) Reports for further details.

PROCEDURES

Arrest or Detention

19. To justify an arrest or detention, officers will record in their notebook all reasonable grounds, indicators, and non-verbal and verbal responses, including inculpatory and exculpatory statements relating to a person.

Note: If an incident involves more than one traveller, reasonable grounds, indicators and non-verbal and verbal responses must be recorded for each individual traveller.

Refer to EN Manual Part 8, Chapter 1, Notebooks, for further details on note taking.

20. Officers must obtain approval from a senior officer to proceed with the detention of a person for a strip search.
21. Officers will follow the steps for an arrest as per Part Six, Chapter One, Arrest and Detention Policy and Procedures.

Rights and Cautions

22. Prior to undergoing a strip search under section 22 of the *Preclearance Act*, a person is detained and, therefore, must be advised of their rights, cautioned, and given the opportunity to contact counsel.
23. Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures for detention procedures. Use the following detention statement:
 “I am detaining you because I suspect on reasonable grounds that you have concealed goods or are carrying anything dangerous to human life or safety on your person and that it is necessary to conduct a strip search for preclearance purposes as authorized by section 22 of the *Preclearance Act*.”
24. Persons must be asked whether they wish to consult a senior officer.
25. Notes should be made to indicate the person’s response.
26. When a language barrier is identified, officers must take reasonable steps to obtain an interpreter or other suitable person capable of speaking the language of a person.
27. Prior to the commencement of any search, persons using an interpreter or other suitable person must be informed through the interpreter or other suitable person of the detention of their right to retain and instruct counsel, and of section 22.
28. Statements made by an individual prior to their detention may be considered spontaneous utterances and may be admissible into evidence. These statements, and the circumstances in which they were made, should be recorded into the notebooks of officers. Persons who admit to unlawful conduct, and who have not been previously cautioned concerning the making of statements, should be cautioned concerning the making of further statements.
29. Officers must record in their notebooks the time at which the rights/cautions were given, the answers received when asked if the rights/cautions were understood, as well as the decision made by the person concerning contacting counsel and being taken before a senior officer.

Contesting Grounds under Section 22

30. When a person requests to speak to a senior officer, or elects to contest the reasonable grounds for a search under section 22, the officer requesting the search will advise a senior officer of the reasonable grounds.
 Note: At ports of entry where a senior officer is not available, officers will telephone the closest CBSA office where a senior officer is in charge. Persons will be allowed to talk to the senior officer by telephone if needed.
31. The searching officer will ensure that the person has had the opportunity to verbally advise the senior officer of their objection.
32. When a person talks to a senior officer, the senior officer must deliver a secondary caution.

33. Senior officers will assess whether there are reasonable grounds to suspect and whether the search is necessary for 22 and decide whether the search may take place. The senior officer reviewing the grounds cannot be the same person who approved the original request to conduct the search. If a second senior officer is not available, one must be contacted by phone.

Note: In a case where a strip search is to be conducted on more than one traveller, the senior officer must hear the objections of any traveller in the group who requests a senior officer, or who contests the search. Reasonable grounds must be reviewed and approved for each traveller on an individual basis.

34. Senior officers who review the grounds for conducting a strip search must record in their notebook all contact with the suspect person(s), whether or not they approved or denied the strip search and the reasons for their decision.

Sex & Gender

35. Strip searches are to be conducted by an officer of the same sex as the person being searched.
36. An assisting officer of the same sex as the officer conducting the search must also be present.
37. A preclearance officer may not observe a strip search under section 22 of a person of the opposite sex. If no officer of the same sex is available, the preclearance officer may authorize any suitable person of the same sex to observe the search.

Note: Refer to EN Manual Part 6, Chapter 6, Appendix A, Authorizing Assistance for a Personal Search, for further instructions if two officers of the same sex as the person are not available.

Results

38. CBSA will notify the US CBP of the results of the strip search so CBP can continue its preclearance examination using that information.
39. In the case where the strip search is non-resultant, persons and goods in custody will be transferred back to the US CBP so that the US CBP preclearance officer may determine whether or not to allow preclearance.

Note: Should the traveller wish to withdraw from the preclearance process, please advise US CBP of the traveller's request and the US preclearance officer will take the necessary action to conclude the preclearance process. If the traveller is in the CBSA area, requests to withdraw, and refuses to return to the US preclearance area, CBSA will contact US CBP to advise of such and provide US CBP with information to complete a system closeout.

40. In the case where a strip search is resultant, the officer will refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures for arrest procedures.

Note: As soon as practicable, notify US CBP of the results.

ROLES AND RESPONSIBILITIES

CBSA officers

41. CBSA officers are responsible for:

- a) adhering to this policy and procedures;
- b) conducting strip searches in Canada, on behalf of US CBP; or advising US CBP of the reasons a strip search will not be conducted;
- c) following all necessary health and safety precautions;
- d) assisting other officers by clearing search rooms, preparing evidence bags, protective gloves, and paperwork, and keeping detailed, accurate notes; and
- e) transferring persons back to US CBP, in the case that a strip search is non-resultant or resultant but not leading to arrest

Senior Officers

42. Senior officers are responsible for:

- a) liaising with US CBP to have Canadian officers attend the US Preclearance area, as needed;
- b) evaluating the grounds for suspicion as presented by officers;
- c) providing guidance and technical assistance to lead and assisting officers;
- d) ensuring search rooms are available when required;
- e) assisting in the provision of evidence bags, cameras, and protective gloves;
- f) notifying all involved officers when a seizure has commenced;
- g) advising the Regional Intelligence Officer (RIO) and receiving police force when required;
- h) notifying US CBP of the results of the strip search;
- i) ensuring that the policies and procedures related to personal searches are adhered to; and
- j) taking appropriate corrective action on any breaches of the policy.

REFERENCES

EN Manual

PROTECTED B

Preclearance Act

Privacy Act

The Canadian Charter of Rights and Freedoms

Preclearance Act, 2016

Authorities for Search and Detention

CBSA Search Rooms

Strip search by border services officer

A border services officer may conduct a strip search if they have reasonable grounds to suspect that you have on your person concealed goods or anything that would present a danger to human life or safety, **and** the strip search is necessary for the purpose of conducting preclearance [subsection 22(3)].

This search authority is subject to your right to be taken before a senior officer and your right to be searched by an officer of the same sex or a suitable person of the same sex [subsections 25(1) and 26(1)].

Monitored Bowel Movement

A border services officer may conduct a monitored bowel movement if they have reasonable grounds suspect that you are concealing goods inside your body, the monitoring would permit the finding or retrieval of the goods, **and** the monitoring is necessary for the purpose of conducting preclearance [subsection 23(3)].

This search authority is subject to your right to be taken before a senior officer and your right to be searched by an officer of the same sex or a suitable person of the same sex [subsections 25(1) and 26(1)].

X-ray or Body Cavity Search

A border services officer may request that you undergo an x-ray search or a body cavity search if the officer has reasonable grounds to suspect that you are concealing goods inside your body, the x-ray search would permit the finding or identification of the goods or the body cavity search would permit the finding or retrieval of the goods, **and** the search is necessary for the purpose of conducting preclearance [subsection 24(1)].

Your consent is required before an x-ray or body cavity search can be conducted unless there are reasonable grounds to suspect that there is a clear and substantial danger to your health or safety [subsection 24(2)].

Only an x-ray technician, with the consent of a physician, can conduct an x-ray search. Only a physician can conduct a body cavity search [subsection 24(4)].

Preclearance Act, 2016

Authorities for Search and Detention

Right to be taken before a senior officer

Before a border services officer can conduct a strip search, or request a monitored bowel movement, the officer must inform you of your right to be brought before a senior officer [subsection 25(1)].

If you elect to be brought before a senior officer, the search cannot be conducted unless the senior officer agrees that the border services officer is authorized to conduct the search [subsection 25(2)].

Important Notice

Preclearance Act (1999, C. 20)

Authorities for Search and Detention

Frisk search – reasons of safety

A preclearance officer is authorized to conduct a frisk search of a person the officer suspects on reasonable grounds is carrying anything that would present a danger to human life or safety. (Section 20)

Frisk search – reasons of evidence

A preclearance officer is authorized to conduct a frisk search of a traveller the officer suspects on reasonable grounds has unreported goods or anything else on his or her person that is evidence of a false declaration made to a preclearance officer. (Section 21)

Frisk search by preclearance officer of same sex

Only a preclearance officer or other suitable authorized person of the same sex as the person who is to be searched may perform a frisk search for evidence of a false declaration. (Subsection 23(3))

Detention for strip search

Where a preclearance officer suspects on reasonable grounds a person is carrying anything that would present a danger to human life or safety, or has unreported goods or anything else on his or her person that is evidence of a false declaration made to a preclearance officer, and that a strip search is necessary, the preclearance officer is authorized to detain the person and request a Canadian officer conduct a strip search. (Subsection 22(1))

Strip search by a Canadian officer

A Canadian officer is authorized to conduct a strip search of a person the Canadian officer suspects on reasonable grounds is carrying anything that would present a danger to human life or safety, or has unreported goods or anything else on his or her person that is evidence of a false declaration made to a preclearance officer and that the strip search is necessary. (Subsection 22(2))

Strip search by a Canadian officer of same sex

Only a Canadian officer or other suitable authorized person of the same sex as the person who is to be searched may perform a strip search. (Subsection 23(3))

Preclearance officer may be present

A preclearance officer or other suitable authorized person of the same sex may be present for the strip search. (Subsections 22(2) and 23(4))

Right to be taken before a senior officer

Before a frisk search for evidence of a false declaration is carried out by a preclearance officer or any strip search is carried out by a Canadian officer, a person has the right to be taken before a senior officer, and the person must be informed of that right by the preclearance or Canadian officer. (Subsection 23(1))

Powers of a senior officer

A senior officer is authorized to direct that a frisk search be carried out where the senior officer has reasonable grounds to suspect that the traveller is carrying anything that is evidence of a false declaration made to a preclearance officer and the senior officer feels the frisk search is necessary. (Subsection 23(2))

A senior officer is authorized to direct that a strip search be carried out where the senior officer has reasonable grounds to suspect that the person is carrying anything that would present a danger to human life or safety or, that the traveller is carrying anything that is evidence of a false declaration made to a preclearance officer and the senior officer feels the strip search is necessary. (Subsection 23(2))

